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10 Attorneys for Defendant WELLS FARGO BANK N.A., successor by merger with
11 Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB, f/k/a World
12 Savings Bank, FSB ("Wells Fargo")

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND**

15 John Edward Robinson, Janice M
16 Walsh,

17 Plaintiffs,

18 vs.

19 Wells Fargo Bank N.A.

20 Defendant,

21 Case No. 4 16-cv-01619-YGR

22 **[PROPOSED] ORDER ON MOTION
TO EXPUNGE LIS PENDENS AND
REQUEST FOR MONETARY
SANCTIONS AGAINST
PLAINTIFFS JOHN EDWARD
ROBINSON AND JANICE M.
WALSH IN THE AMOUNT OF
\$1,500.00**

23 *as modified by the Court*

24 Date: January 8, 2019

25 Time: 2:00 p.m.

Courtroom: 1, Fourth Floor

26 Now before the Court is the MOTION TO EXPUNGE LIS PENDENS AND
27 REQUEST FOR MONETARY SANCTIONS AGAINST PLAINTIFFS JOHN
28 EDWARD ROBINSON AND JANICE M. WALSH IN THE AMOUNT OF
\$1,500.00 filed by Defendant WELLS FARGO BANK N.A., successor by merger
with Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB, f/k/a
World Savings Bank, FSB ("Wells Fargo"). (Dkt. No. 72.)

29 **STATEMENT OF THE RATIONALE OF THE DECISION**

30 The term of the Notice of Lis Pendens has expired by operation of law: The
31 constructive notice from a recorded lis pendens continues until a judgment is

1 rendered and the period for appeal expires. (*4 Miller & Starr California Real Estate*
2 (4th ed. 2016) Cal. Real Est. §10:151.) “The *lis pendens*...is purely incidental to the
3 action wherein it is filed. It refers specifically to such action, and has no existence
4 apart from it. When, therefore, the action has been terminated by the entry of a
5 judgment and by expiration of the statutory time within which an appeal from the
6 judgment may be taken, the notice of *lis pendens* has fully served its purpose.”
7 (*Garcia v. Pinhero* (1937) 22 Cal.App.2d 194, 197 [finality of action after entry of
8 judgment of dismissal after sustaining of demurrer].)

9 Cal. Civ. Proc. Code § 405.32 states:

10 In proceedings under this chapter, the court shall order that the notice
11 be expunged if the court finds that the claimant has not established by
12 a preponderance of the evidence the probable validity of the real
13 property claim. The court shall not order an undertaking to be given as
14 a condition of expunging the notice if the court finds the claimant has
15 not established the probable validity of the real property claim.

16 The underlying action has been dismissed **with prejudice** by Court order after
17 granting of the Motion to Dismiss Plaintiff’s First Amended Complaint, and
18 subsequently after Plaintiffs’ failure to file timely their Second Amended Complaint
19 as ordered by the Court. This means that Plaintiffs have failed, despite multiple
20 chances, to establish a valid claim against Defendant. Presently, there is no
21 underlying action pending for Plaintiffs to establish a valid real property claim
22 against Wells Fargo. The dismissal of the underlying case, **with prejudice**, marks
23 the finality of this action and the termination of the Lis Pendens by operation of law.

24 ORDER

25 After reviewing the papers submitted, the Court hereby **GRANTS IN PART AND**
26 **DENIES IN PART** Defendant Wells Fargo’s motion.

27 The Notice of Pendency of Action, which recorded on May 23, 2016, in the
28 Official Records of Contra Costa County, California, as Instrument No. 2016-
0097448-00, is hereby **EXPUNGED** as against Plaintiffs John Edward Robinson and
Janice M. Walsh, in relation to the above-entitled action filed against Defendant

1 WELLS FARGO BANK N.A.

2 The Court **DENIES** Defendant Wells Fargo's request for monetary sanctions
3 against Plaintiffs John Edward Robinson and Janice M. Walsh.

4 This Order terminates Docket Number 72.¹

5 IT IS SO ORDERED.

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7 Dated: December 21, 2018

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YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT
JUDGE

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¹ In light of this Order, the hearing set for January 8, 2019 is **VACATED**.